

**REMARKS**

Claims 1-10 are pending in the application. Claims 1, 2, 4-6, 9 and 10 were rejected under 35 USC § 103(a) as being unpatentable over Parulski et al. (US Patent No. 5,914,748) in view of Brady et al. (US Patent No. 5,684,898). Applicant respectfully disagrees.

Claim 1, as amended, requires that a probability function is calculated for each pixel in the image. Parulski uses a look up table to acquire the values used in the difference images. See col. 5, lines 40-55. Look up tables are well-known as being a quick means to obtain an estimated value for particular processes. Similarly, the probability used in Brady is a look-up table value obtained based upon a weighting curve. Neither of these is a calculated value of probability for each pixel. Calculating the values of each pixel, as opposed to obtaining an estimated or 'best-fit' value from a look-up table, results in a more accurate calculation and therefore, has an advantage of producing a more accurate foreground/background determination. Applicant therefore submits that claim 1 is patentably distinguishable over the prior art and request allowance of this claim.

Claims 2, 4-6, 9 and 10 depend from claim 1 and should be ruled allowable for that reason and for their own merits. In light of the amendments to claim 1, the combination of references does not teach, show nor suggest the limitations of claim 1, much less the further limitations of the dependent claims. Applicant therefore submits that claim 1 is patentably distinguishable over the prior art and request allowance of these claims.

Claim 3 is rejected under 35 USC § 103(a) as being unpatentable over Parulski et al. in view of Brady et al. and in further view of Gehrmann (US Patent No. 5,382,980). As discussed above, Parulski and Brady do not teach the elements of claim 1, and Gehrmann does nothing to cure that deficiency, nor does the combination teach the limitation of claim 3 in conjunction with claim 1. Therefore, Applicant submits that claim 3 is patentably distinguishable over the prior art and request allowance of this claim.

Claim 10 is rejected under 35 USC § 103(a) as being unpatentable over Parulski et al. in view of Brady et al. and in further view of Jang (US Patent No. 5,825,909). As discussed above, Parulski and Brady do not teach the elements of claim 1, and Jang does nothing to cure that deficiency, nor does the combination teach the limitation of claim 10 in conjunction with claim 1. Therefore, Applicant submits that claim 10 is patentably distinguishable over the prior art and request allowance of this claim.

Claim 8 is rejected under 35 USC § 103(a) as being unpatentable over Parulski et al. in view of Brady et al. and in further view of Gardos et al. (US Patent No. 5,710,602). As discussed above, Parulski and Brady do not teach the elements of claim 1, and Gardos does nothing to cure that deficiency, nor does the combination teach the limitation of claim 8 in conjunction with claim 1. Therefore, Applicant submits that claim 8 is patentably distinguishable over the prior art and request allowance of this claim.

No new matter has been added by this amendment. Allowance of all claims is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Julie L. Reed  
Julie L. Reed  
Reg. No. 35,349

MARGER JOHNSON & McCOLLOM  
1030 SW Morrison Street  
Portland, OR 97205  
(503) 222-3613  
Customer No. 20575